



# CITY OF NEWTON, MASSACHUSETTS

## Department of Planning and Development

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David B. Cohen  
Mayor

<b>Continued Public Hearing Date:</b>	<b>April 23, 2007</b>
Zoning and Planning Action Date:	June 11, 2007
Board of Aldermen Action Date:	June 18, 2007
90-Day Expiration Date:	July 22, 2007

TO: Ald. Brian E. Yates, Chairman, and  
Members of the Zoning and Planning Committee  
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development  
Juris Alksnitis, Chief Zoning Code Official  
Alexandra Ananth, Planner

SUBJECT: **Update** of Petition # 66-07 of NEW ENGLAND DEVELOPMENT proposing to amend the Newton Zoning Ordinance Section 30-15 by adding a new subsection entitled **Planned Business Development (PBD)** relative to the mixed use and design of large tracts of land in certain business districts and requirements to meet certain' minimum criteria, including acreage and FAR, in turn for eligibility for certain density/dimensional bonuses and exceptions.

CC: Mayor David B. Cohen  
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

**Recommendation:** *Close hearing and continue review of items needing further revision in Committee's Working Session*

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The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

### I. BACKGROUND

The subject petition was initially heard at the March 26, 2007 public hearing held by the Zoning and Planning Committee. The hearing was kept open in order to allow the petitioner time to address issues mentioned in the previous Planning Department memorandum, as well as to respond to concerns

raised at the public hearing. The petitioner subsequently provided a *revised* draft of the proposed Zoning Ordinance text amendment to the Planning Department on April 17, 2007 (**see Attachment B – Goulston & Storrs Memorandum, April 17, 1007, Zoning Re-draft**). In the following memorandum, the Planning and Development Department seeks to provide an overview of changes made to the proposed text amendment since the earlier version. The petitioner has made many positive improvements to the proposed text amendment including:

- adding two definitions to Section 30-1;
- adding Planned Business Development to Section 30-11 as an allowed use in BU4 and BU5 Zoning Districts by special permit;
- adding on-site affordable housing as a requirement for PBDs;
- further refining the *Findings* in Section 30-15(s)(c) to include (among others) that the PBD provides public transit enhancements including on-site public transportation facilities, transportation demand management initiatives, and connectivity to offsite public transportation systems; and
- adding height limitations and open space requirements for PBDs.

Also see the attached table provided by the petitioner (**Attachment C – Goulston & Storrs Memorandum, April 18, 2007 – Comment Table.**)

However, the Planning Department notes that further work is necessary in order to clarify certain sections of the proposed text amendment.

## II. PROPOSED RESTATED ZONING ORDINANCE AMENDMENT

The following is the proposed *revised* language provided by the petitioner:

### 1. *Section 30-1 is amended by adding the following two definitions:*

***Development Parcel: The real property on which a Planned Business Development is located, as shown on a Planned Business Development Plan approved by the Board of Aldermen in connection with a special permit under this section 30-15(s).***

***Planned Business Development or PBD: Any construction, alteration, enlargement, extension or reconstruction of buildings or structures, together with all facilities, parking, infrastructure and development related thereto, located on a parcel or collection of contiguous parcels, which meet certain minimum criteria set forth in Section 30-15(s) and which can provide for additional density and other exceptions beyond those available as of right provided the applicable criteria set forth in Section 30-15(s) are met.***

### 2. *Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the following as new subparagraph (12): "In Business District 4, a Planned Business Development:"*

### 3. *Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): "A Planned Business Development:"*

### 4. *The following Section 30-15(s) is added:*

*Section 30-15(s) Planned Business Development (PBD)*

- (a) *Purpose. This Section has been enacted to encourage the best use and design of large tracts of land in certain business districts, while promoting the best interests of residents of the City, through the use of Planned Business Developments. The major objectives of this section are to: (a) facilitate development of a mix of uses that will increase the vitality in the Business 4 and Business 5 zoning districts; (b) create new jobs at a variety of income and skill levels; (c) replace vacant and blighted buildings with mixed-use development that will contribute to the fiscal health of the City; (d) encourage the development of affordable housing opportunities in accordance with the City's Inclusionary Housing Ordinance; (e) to the extent feasible, enhance the surrounding neighborhood, and (f) promote **consistency** with the City's comprehensive **planning** and Comprehensive Plan.*
- (b) *Minimum Criteria for PBDs. In order to be eligible for any approval under Section (e) below, a PBD must meet the following threshold criteria:*
- (1) The Development Parcel shall be located in the Business 4 or Business 5 zoning district;*
  - (2) The Development Parcel shall contain a minimum of ten (10) acres;*
  - (3) The total Floor Area Ratio of the PBD (excluding surface or structured parking and loading areas) shall not exceed 3.0;*
  - (4) The PBD shall include a mix of commercial and residential uses;*
  - (5) The PBD shall provide onsite affordable housing opportunities in accordance with the City's Inclusionary Housing Ordinance (Section 30-24W);*
  - (6) A Development Parcel in the Business 4 District shall contain at least 1,200 square feet of land area, whether improved or unimproved, for each dwelling unit located on the Development Parcel and a Development Parcel in the Business 5 District, shall contain at least 1,500 square feet of such land area for each dwelling unit located on the Development Parcel;*
  - (7) At least 20% percent of the Development Parcel on which a PBD with less than 250,000 square feet of gross floor area is located, and at least 30% percent of the Development Parcel on which a PBD with 250,000 or more square feet of gross floor area is located, shall consist of open space, e.g. areas uncovered by buildings or other structures, which shall specifically include: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational facilities;*
  - (8) Buildings in the PBD shall not exceed the heights permitted under Section 30-15(s) (d) (5) below; and*
  - (9) If the PBD includes a mix of uses and includes shared parking facilities, the following parking stall requirements shall apply to the PBD: (a) a minimum of 1.25 parking stalls for each dwelling unit, and (b) one parking stall for each 300 square feet of gross floor area of commercial use; otherwise a PBD shall be required to meet the parking stall requirements set forth in Section 30-19(d).*

- (c) *Prior to granting any approval under Section (d) below, the Board of Aldermen shall first make the following findings, which findings shall be in addition to those required under Section 30-23(c)(2) and Section 30-24(d), with respect to the PBD:*
- (1) As part of the construction and ultimate use of the PBD, conditions have been included to address any material adverse impacts on the immediate or nearby neighborhood resulting from construction itself, as well as traffic, parking and noise and other impacts associated with the as-built PBD;*
  - (2) The PBD provides for long term public benefits, such as affordable housing, substantial traffic and roadway enhancements, water and sewer infrastructure enhancements, to the immediate or nearby neighborhood;*
  - (3) The PBD provides public transit enhancements, including onsite public transportation facilities, transportation demand management initiatives, and connectivity to offsite public transportation systems via shuttle service or other appropriate mechanisms;*
  - (4) The PBD has been designed with reference to the existing and currently proposed or planned land uses in the vicinity of the PBD;*
  - (5) The PBD includes uses compatible with abutting parcels and consistent with the City's Comprehensive Plan that are supportive of a well-planned region-serving corridor and which are integrated with and help produce transportation and other infrastructure enhancements that produce net positive impacts for the City;*
  - (6) The PBD creates relationships between the PBD, and abutting parcels and between the PBD and abutting streets, that are designed with appropriate consideration to streetscape continuity, where appropriate, and setbacks from abutting properties and ways;*
  - (7) The PBD includes access routes between the PBD and abutting parcels and ways that facilitate and enhance pedestrian and vehicular access within the neighborhood;*
  - (8) The PBD is in furtherance of the goals and policies of the City's comprehensive planning and Comprehensive Plan; and*
  - (9) The PBD is in harmony with the general purpose and intent of this Ordinance pursuant to Massachusetts General Laws Chapter 40A, Section 9.*
- (d) *Density/Dimensional Bonus and Exceptions. If a PBD is eligible for approval under Sections (b) and (c) above, the Board of Aldermen may grant site plan approval in accordance with the procedures provided in Section 30-23 and may grant a special permit in accordance with the procedures provided in Section 30-24 for the PBD granting exceptions to any applicable provisions of this Ordinance relating to density, bulk or dimensional controls, signage (whether onsite or offsite) and access, and/or permitting any use not expressly allowed in the Business 4 or Business 5 Districts; provided, however, that the following limitations shall apply: (1) Floor Area Ratio shall not exceed 3.0; (2) minimum off-street parking shall not be reduced by more than 1/3 of the parking otherwise required for the PBD under Section 30-19(d) or this Section 30-15(s), as applicable, if the criteria under Section 30-19(d)(18) are satisfied; (3) notwithstanding any applicable ordinance to the contrary, minimum lighting requirements may be reduced but not to less than an*

average of 0.75 footcandles; (4) uses not expressly allowed in the Business 4 or Business 5 Districts, but allowed by right or by special permit in other business or mixed-use districts in the City, shall be allowed only if the Board determines that they are compatible with the mix of uses within the PBD; (5) the height of any building in the PBD shall not exceed 96 feet; provided, however, that any building, or portion thereof that is setback more than 100 feet from the front and rear lot lines may include an additional one foot of height (excluding customary mechanical enclosures and rooftop elements) for every one and a half feet by which the applicable portion of the building is set back from the front or rear lot line, whichever is closer, up to a maximum of an additional 100 feet; and (6) all signage for a PBD shall be in accordance with the provisions of this Ordinance and a comprehensive signage program developed by the petitioner and approved by the Board in accordance with the provisions of this Ordinance.

- (e) **Lots.** *In the application of the requirements of this Ordinance to a PBD, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot whether or not the Development Parcel is in single or multiple ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or demised premises within a PBD shall not be deemed to be a violation by any other owner or occupant within the PBD. Any PBD in multiple ownership shall be required to form a property owners association to coordinate the operation of the PBD among property owners and to facilitate communication with the City regarding the PBD.*

*Phasing. Any PBD may be built in multiple phases over time. Notwithstanding the provisions of Section 30-24(c)(4) or other provisions of this Ordinance, provided that the development of a first phase of the PBD is commenced within two years of the issuance of such approval, exclusive of any period during which an appeal of the same is pending or any period during which events beyond the reasonable control, or otherwise for good cause, of the petitioner or its successor delays the exercise of its rights, approvals under this Ordinance for a PBD shall not lapse; provided, however, that such phasing may be specified in the site plan approval.*

- (g) **Modifications.** *Any material modification to a PBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23. The following provisions shall apply with respect to any proposed modification of a **PBD**: (A) a change of use or relocation of a use within the PBD shall not require additional approvals under this Ordinance if the total Gross Floor Area within the PBD devoted to such use does not increase by more than five percent (5%) in the aggregate, and (B) a change of use that results in a lower net parking requirement for the PBD (pursuant to Section 30-19) shall not require additional approvals under this Ordinance.*
- (h) **Applicability.** *Buildings, structures, lots and uses within or associated with a PBD shall be governed by the applicable regulations for the Business 4 District or the Business 5 District, as applicable, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern.*

### III. UPDATE-OVERVIEW

A. Update of concerns identified in the original proposal. In the Planning Department's previous review memorandum we encouraged the petitioner to address the following issues:

- ✓ Consistent references to BU-4 and BU-5 Districts and type of zoning mechanism. In the previous version there appeared to be no statement within the proposed text establishing a requirement for necessary underlying zones.

Section 30-15(s)(b)(l) now provides that a PBD may only be located in a BU-4 or BU-5 Zoning District. In addition, the petitioner is proposing to add two definitions to Section 30-1, to include definitions for "Development Parcel" and for "Planned Business Development." The petitioner also proposes to amend Section 30-11, Business Districts, subsections (d) & (i) to include a Planned Business Development as an allowed use by special permit in the BU-4 and BU-5 Districts.

However, the Planning Department notes that the petitioner has not yet described the PBD in the context of a category of use or overlay method. The Planning Department suggests the petitioner delete the Purpose provision of Section 30-15(s)(a) and replace it with language more similar to that in Section 30-15(k).

- ✓ Integration of Planned Business Development findings. The Planning Department asked that the proposed text amendment include findings that would link the Planned Business Development plan with the City's Comprehensive Plan and criteria already established in Section 30-23(c)(2) with respect to site plan approval and also to the criteria established in Section 30-24(d) with respect to grant of special permit.

Additional findings have been added to section 30-15(s)(c) at (c)(5)&(8) requiring furtherance of the goals and policies of the City's Comprehensive Plan. The nine (9) PBD findings are in addition to the nine (9) criteria required under Section 30-23(c)(2) and 4 criteria required under Section 30-24(d). As a result, there would be a total of 20 findings and criteria among the three relevant sections of the Zoning Ordinance. While the petitioner has made a good faith effort to articulate the findings, the Planning Department believes these provisions merit further review to consider opportunities for simplification and refinement to avoid overlap and perhaps reducing the number.

- ✓ Narrow Special Permit Granting Authority. Section 30-15(s)(d), *Density/Dimensional Bonus and Exceptions*, originally proposed open ended language with extraordinary special permit authority for the Board of Aldermen leading to "...granting *exceptions to any applicable provision of this Ordinance relating to density, bulk or dimensional controls, signage (whether onsite or offsite) and access, and/or permitting any use not expressly allowed in the Business 4 or Business 5 Districts; ...*"

The petitioner has clarified that the existing criteria for parking reductions under Section 30-19(d)(18) must be met, a height limitation has been added (with exception if certain additional criteria are met), minimum lot area per dwelling unit ratios have been refined, and the petitioner has proposed a minimum open space requirement (**See also Attachment A — Table 1: Comparison of Commercial and Density Controls**). However the proposed text still remains unusually broad in its effect with the Board of Aldermen able to grant exceptions to many of the density and dimensional controls in the City's Zoning Ordinance as well as permitting uses "*not expressly allowed in the Business 4 or Business 5 Districts.*" While the

petitioner proposes to limit the uses to those allowed by right or by special permit in Business and Mixed Use Districts, further thought is warranted as to all potentially allowable uses in PBD's and if any uses or changes in use should require specific special permits as is currently required for many uses in BU and MU zones.

- ✓ Clarify provisions for material modifications to Planned Business Development plans. Section 30-15(s)(g) proposed to address potential modifications to a previously approved PBD plan and provided that *"..any material modification..."* would require site plan approval pursuant to Section 30-23, except where the Commissioner of Inspectional Services (Commissioner) has the discretion to issue a consistency ruling.

The provision authorizing the Commissioner of Inspectional Services to approve certain material modifications has been deleted.

However, "Material modifications" remains undefined. Section 30-15(s)(g) now provides that *"(A) a change of use or relocation of a use within the PBD shall not require additional approvals if the GFA within the PBD devoted to such use does not increase by more than 5% in the aggregate, and (B) a change of use that results in a lower net parking requirement for the PBD shall not require additional approvals under this Ordinance."*

The Planning Department believes further clarifications are needed to address the following:

- Use(s) to be changed were approved as part of the initial PBD
- New use(s) not requiring "additional approvals under this Ordinance" are by-right uses in the BU-4 and BU-5 zones.
- New use(s) not authorized by the special permit for the initial PBD, and requiring a special permit in BU-4 and BU-5 still require a special permit as established by the underlying zones.

B. Additional issues arising in the revised text amendment. In addition, the Planning Department notes the following new issues:

- Open Space requirements should relate to the existing definition in Section 30-1. The Zoning Ordinance establishes and defines certain terms in Section 30-1, *Definitions*, including "Space, useable open". In section 30-15(s)(b)(7) the petitioner proposes Open Space requirements linked with the amount of gross floor area of the Development Parcel and appears to define open space in a manner, which differs from the established definition. Should the petitioner seek to expand this term to expand additional landscaping components, such as "hardscape" elements, this is more appropriately accomplished within Section 30-1. While at the present time, the Zoning Ordinance does not set out an open space requirement for commercial zones, the Planning Department believes that it is critically important to establish open space standards for PBDs. The Planning Department also believes that additional clarification of the rationale for the proposed linkage between GFA and minimum open space thresholds is needed.
- Clarify height limitations. Section 30-15(s)(d)(5) sets height limitations for buildings within the PBD as follows: *"..the height of any building in the PBD shall not exceed 96 feet; provided, however, that any building, or portion thereof that is setback more than 100 ft. from the front and rear lot lines may include an additional one foot of height (excluding customary mechanical enclosures and rooftop elements) for every one and a half feet by which the*

*applicable portion of the building is set back from the front or rear line, whichever is closer, up to a maximum of an additional 100 ft.;"*

It is not clear if "whichever is closer" refers to the closest lot line (front or rear) or whether the prevailing point of reference is the lesser distance to a respective lot line. For example, in cases where more than one office or residential multi-story building is contemplated, would the shortest distance to a front or rear lot line apply to the height calculation for both buildings? In addition, it appears that the exception calculation language does not distinguish between the threshold height of 96 ft. linked with the "standback" distance of 100 ft. from the increment allowed as an exception beyond these thresholds. This suggests that the exception calculation results in taller buildings than would result with an approach granting an exception for an increment of additional height above the referenced thresholds. For example, in the case of a building sited 120 ft. from a front or rear lot line, the available building height would be 176 ft (approx. 17.6 stories), while applying an "exception increment" approach would result in a building height of 109 ft. (approx. 10.9 stories). As a result, further clarification of the proposed building height provision is needed.

At present, the BU-4 zone allows building heights up to 96ft., provided there is a front setback of A the building height, or 48 ft. while no rear setback is required except where abutting residential or Public Use zones. In the BU-5 zone, up to 48 ft. height is available with a 15 ft. front setback and no rear setback unless abutting a residential zone.

## VI. SUMMARY

While significant progress is reflected in the proposed revised and restated amendment, an overview of the most recent text indicates additional revisions and refinements are needed for the reasons noted in Section III. Update-Overview, above. The Planning Department continues to support the concept of a Planned Business Development approach and suggests the petitioner develop responses to the concerns noted herein as well as to any concerns stated in the continuation public hearing

***Recommendation: Close hearing and continue review of items needing further revision in Committee's Working Session***

## ATTACHMENTS

***A ATTACHMENT A - Table 1: Comparison of Commercial Dimensional and Density Controls***

***ATTACHMENT B - Goulston & Storrs Memorandum, April 17, 1007 – Zoning Re-draft***

***ATTACHMENT C – Goulston & Storrs Memorandum, April 18, 2007 – Comment Table***



**"Attachment A"**

**Table 1 - Comparison of Commercial Dimensional and Density Controls**

19-Apr-07

Setbacks													
Zoning District	Max. # of Stories	Max. Building Height	Max. Total FAR	GFA/Site Plan Approval	GFA Threshold for Special Permit	Min. Frontage	Min. Lot Area	Min. Lot Area per Unit	Max. Lot Coverage	Min. Open Space	Front	Side	Rear
<b>Business 4 (as of right to max. permitted by Special Permit)</b>	3 to 8 (by S.P.)	36 to 96 ft. (by S.P.)	1.5 to 3.0 (by S.P.)	10,000-19,999 sq. ft.	> 20,000 sq. ft.	80 ft.	10,000 to 40,000 (by S.P.)	1,200 sq. ft.	none	none	The average of the setbacks of the buildings nearest thereto on either side or 1/2 the building height, whichever is less.	1/2 the building height or = to abutting side setback.#	0#
<b>Business 5 (max. permitted by Special Permit)</b>	3 to 4 (by S.P.)	36 to 48 ft. (by S.P.)	1.0 to 1.5 (by S.P.)	10,000-19,999 sq. ft.	> 20,000 sq. ft.	none	0	none	0.25	none	15 ft.	10 ft.#	15 ft.#
<b>Proposed Ordinance</b>	Exceptions allowed with PBD -S.P.	Exceptions allowed with PBD - S.P.	Up to 3.0 (with PBD by S.P. )	10,000-19,999 sq. ft.	> 20,000 sq. ft.	80 ft.	10 acres	1,200 sq. ft.	none	none	none	none	none
<b>CHSQ as currently proposed</b>	2 to 5 stories for retail 6 to 14 stories for residential	198 ft. (not incl. rooftop mechanicals)	2.60	NA	> 20,000 sq. ft.	517 ft.	11 acres	~2,100 sq. ft.	none	not stated	Avg. to 1/2 bldg. ht.1 (by S.P.)	not stated	not stated
<b>Westwood MUOD (by special permit for an Area Master Plan)</b>	6 stories	70 to 120 ft.	1.0 to 1.2			none	50 acres		none	10% exclusive of wetlands	none	none	none
<b>Medford Mixed Use Zoning Districts</b>	7 to 12 stories	100 to 130 ft.	2.25 to 2.7225 (by S.P.)						0.45 to .495 (by S.P.), special provisions for parking structures	10%	15 ft. if abutting a municipally owned street	none	none
<b><u>Proposed Revised Ordinance</u> (changes in bold)</b>	Exceptions allowed with PBD -S.P.	<b>96 to 196 ft. with PBD - S.P. See Footnote 1.</b>	<b>Up to 3.0 excl surface or structured pking &amp; loading areas (with PBD by S.P. )</b>	10,000-19,999 sq. ft.	> 20,000 sq. ft.	80 ft.	10 acres	<b>1,200 sq. ft. for BU4 1,500 sq. ft. for BU5</b>	none	<b>20% for PBD's with less than 250,000 GFA. 30% for PBD's with more than 250,000 GFA</b>	none	none	none

1. 96 ft; provided, however, that any building, or portion thereof, that is setback more than 100 ft. from the front and rear lot lines may include an additional 1 ft. of height (excl mech enclosures and rooftop elements) for every 1.5 ft. by which the applicable portion of the building is set back from the front or rear lot line, whichever is closer, up to a maximum of an additional 100 ft.

#Additional requirements apply if adjacent to a residential or Public Use zone.

## MEMORANDUM

**TO:** Michael J. Kruse  
**FROM:** John E. Twohig  
William H. Dillon  
**DATE:** April 17, 2007  
**SUBJECT:** Zoning Re-draft

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**VIA E-MAIL**

Attached hereto is a clean and redlined version of the Planned Business Development Zoning Text. Pursuant to your Memo of April 12, 2007, in addition to the previous revisions, we have added the following:

- Definitions
  - Development Parcel
  - Planned Business Development or PBD
- Clarified Use Categories
- Modified Criteria by adding new requirements to address the following:
  - Minimum Lot Per Dwelling
  - Open space requirement
  - Height Limitations
  - Parking Criteria

We did not add a specific dimensional modification right, as we believe that it is already in subsection (d) under allowed Exceptions.

Please call/e-mail us with any further comments. We would like to speak to the Aldermen this week, but we will await your concurrence. (*I am out this week, but reachable via e-mail. John*)

Hopefully, we have captured your additional thoughts.

Thanks, Mike, again, for your willingness to review and improve this text.

JET/klg  
Attachments

1. Section 30-1 is amended by adding the following two definitions:

*Development Parcel:* The real property on which a Planned Business Development is located, as shown on a Planned Business Development Plan approved by the Board of Aldermen in connection with a special permit under this section 30-15(s).

*Planned Business Development or PBD:* Any construction, alteration, enlargement, extension or reconstruction of buildings or structures, together with all facilities, parking, infrastructure and development related thereto, located on a parcel or collection of contiguous parcels, which meet certain minimum criteria set forth in Section 30-15(s) and which can provide for additional density and other exceptions beyond those available as of right provided the applicable criteria set forth in Section 30-15(s) are met.

2. Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the following as new subparagraph (12): "In Business District 4, a Planned Business Development;"
3. Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): "A Planned Business Development;"
4. The following Section 30-15(s) is added:

**Section 30-15(s)      Planned Business Development (PBD)**

- (a) *Purpose.* This Section has been enacted to encourage the best use and design of large tracts of land in certain business districts, while promoting the best interests of residents of the City, through the use of Planned Business Developments. The major objectives of this section are to: (a) facilitate development of a mix of uses that will increase the vitality in the Business 4 and Business 5 zoning districts; (b) create new jobs at a variety of income and skill levels; (c) replace vacant and blighted buildings with mixed-use development that will contribute to the fiscal health of the City; (d) encourage the development of affordable housing opportunities in accordance with the City's Inclusionary Housing Ordinance; (e) to the extent feasible, enhance the surrounding neighborhood, and (f) promote consistency with the City's comprehensive planning and Comprehensive Plan.
- (b) *Minimum Criteria for PBDs.* In order to be eligible for any approval under Section (e) below, a PBD must meet the following threshold criteria:
  - (1) The Development Parcel shall be located in the Business 4 or Business 5 zoning district;
  - (2) The Development Parcel shall contain a minimum of ten (10) acres;
  - (3) The total Floor Area Ratio of the PBD (excluding surface or structured parking and loading areas) shall not exceed 3.0;
  - (4) The PBD shall include a mix of commercial and residential uses;
  - (5) The PBD shall provide onsite affordable housing opportunities in accordance with the City's Inclusionary Housing Ordinance (Section 30-24(f));

- (6) A Development Parcel in the Business 4 District shall contain at least 1,200 square feet of land area, whether improved or unimproved, for each dwelling unit located on the Development Parcel and a Development Parcel in the Business 5 District, shall contain at least 1,500 square feet of such land area for each dwelling unit located on the Development Parcel;
  - (7) At least 20% percent of the Development Parcel on which a PBD with less than 250,000 square feet of gross floor area is located, and at least 30% percent of the Development Parcel on which a PBD with 250,000 or more square feet of gross floor area is located, shall consist of open space, e.g. areas uncovered by buildings or other structures, which shall specifically include: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational facilities;
  - (8) Buildings in the PBD shall not exceed the heights permitted under Section 30-15(s)(d)(5) below; and
  - (9) If the PBD includes a mix of uses and includes shared parking facilities, the following parking stall requirements shall apply to the PBD: (a) a minimum of 1.25 parking stalls for each dwelling unit, and (b) one parking stall for each 300 square feet of gross floor area of commercial use; otherwise a PBD shall be required to meet the parking stall requirements set forth in Section 30-19(d).
- (c) Prior to granting any approval under Section (d) below, the Board of Aldermen shall first make the following findings, which findings shall be in addition to those required under Section 30-23(c)(2) and Section 30-24(d), with respect to the PBD:
- (1) As part of the construction and ultimate use of the PBD, conditions have been included to address any material adverse impacts on the immediate or nearby neighborhood resulting from construction itself, as well as traffic, parking and noise and other impacts associated with the as-built PBD;
  - (2) The PBD provides for long term public benefits, such as affordable housing, substantial traffic and roadway enhancements, water and sewer infrastructure enhancements, to the immediate or nearby neighborhood;
  - (3) The PBD provides public transit enhancements, including onsite public transportation facilities, transportation demand management initiatives, and connectivity to offsite public transportation systems via shuttle service or other appropriate mechanisms;
  - (4) The PBD has been designed with reference to the existing and currently proposed or planned land uses in the vicinity of the PBD;
  - (5) The PBD includes uses compatible with abutting parcels and consistent with the City's Comprehensive Plan that are supportive of a well-planned region-serving corridor and which are integrated with and help produce transportation and other infrastructure enhancements that produce net positive impacts for the City;
  - (6) The PBD creates relationships between the PBD, and abutting parcels and between the PBD and abutting streets, that are designed with appropriate consideration to streetscape continuity, where appropriate, and setbacks from abutting properties and ways;

- (7) The PBD includes access routes between the PBD and abutting parcels and ways that facilitate and enhance pedestrian and vehicular access within the neighborhood;
  - (8) The PBD is in furtherance of the goals and policies of the City's comprehensive planning and Comprehensive Plan; and
  - (9) The PBD is in harmony with the general purpose and intent of this Ordinance pursuant to Massachusetts General Laws Chapter 40A, Section 9.
- (d) *Density/Dimensional Bonus and Exceptions.* If a PBD is eligible for approval under Sections (b) and (c) above, the Board of Aldermen may grant site plan approval in accordance with the procedures provided in Section 30-23 and may grant a special permit in accordance with the procedures provided in Section 30-24 for the PBD granting exceptions to any applicable provisions of this Ordinance relating to density, bulk or dimensional controls, signage (whether onsite or offsite) and access, and/or permitting any use not expressly allowed in the Business 4 or Business 5 Districts; provided, however, that the following limitations shall apply: (1) Floor Area Ratio shall not exceed 3.0; (2) minimum off-street parking shall not be reduced by more than 1/3 of the parking otherwise required for the PBD under Section 30-19(d) or this Section 30-15(s), as applicable, if the criteria under Section 30-19(d)(18) are satisfied; (3) notwithstanding any applicable ordinance to the contrary, minimum lighting requirements may be reduced but not to less than an average of 0.75 footcandles; (4) uses not expressly allowed in the Business 4 or Business 5 Districts, but allowed by right or by special permit in other business or mixed-use districts in the City, shall be allowed only if the Board determines that they are compatible with the mix of uses within the PBD; (5) the height of any building in the PBD shall not exceed 96 feet; provided, however, that any building, or portion thereof, that is setback more than 100 feet from the front and rear lot lines may include an additional one foot of height (excluding customary mechanical enclosures and rooftop elements) for every one and a half feet by which the applicable portion of the building is set back from the front or rear lot line, whichever is closer, up to a maximum of an additional 100 feet; and (6) all signage for a PBD shall be in accordance with the provisions of this Ordinance and a comprehensive signage program developed by the applicant and approved by the Board in accordance with the provisions of this Ordinance.
- (e) *Lots.* In the application of the requirements of this Ordinance to a PBD, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot whether or not the Development Parcel is in single or multiple ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or demised premises within a PBD shall not be deemed to be a violation by any other owner or occupant within the PBD. Any PBD in multiple ownership shall be required to form a property owners association to coordinate the operation of the PBD among property owners and to facilitate communication with the City regarding the PBD.
- (f) *Phasing.* Any PBD may be built in multiple phases over time. Notwithstanding the provisions of Section 30-24(c)(4) or other provisions of this Ordinance, provided that the development of a first phase of the PBD is commenced within two years of the issuance

of such approval, exclusive of any period during which an appeal of the same is pending or any period during which events beyond the reasonable control, or otherwise for good cause, of the applicant or its successor delays the exercise of its rights, approvals under this Ordinance for a PBD shall not lapse; provided, however, that such phasing may be specified in the site plan approval.

- (g) *Modifications.* Any material modification to a PBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23. The following provisions shall apply with respect to any proposed modification of a PBD: (A) a change of use or relocation of a use within the PBD shall not require additional approvals under this Ordinance if the total Gross Floor Area within the PBD devoted to such use does not increase by more than five percent (5%) in the aggregate, and (B) a change of use that results in a lower net parking requirement for the PBD (pursuant to Section 30-19) shall not require additional approvals under this Ordinance.
- (h) *Applicability.* Buildings, structures, lots and uses within or associated with a PBD shall be governed by the applicable regulations for the Business 4 District or the Business 5 District, as applicable, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern.

1. Section 30-1 is amended by adding the following two definitions:

*Development Parcel:* The real property on which a Planned Business Development is located, as shown on a Planned Business Development Plan approved by the Board of Aldermen in connection with a special permit under this section 30-15(s).

*Planned Business Development or PBD:* Any construction, alteration, enlargement, extension or reconstruction of buildings or structures, together with all facilities, parking, infrastructure and development related thereto, located on a parcel or collection of contiguous parcels, which meet certain minimum criteria set forth in Section 30-15(s) and which can provide for additional density and other exceptions beyond those available as of right provided the applicable criteria set forth in Section 30-15(s) are met.

2. Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the following as new subparagraph (12): "In Business District 4, a Planned Business Development:"

3. Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): "A Planned Business Development:"

4. The following Section 30-15(s) is added:

Section 30-15(s)      Planned Business Development (PBD)

- (a) *Purpose.* This Section has been enacted to encourage the best use and design of large tracts of land in certain business districts, while promoting the best interests of residents of the City, through the use of Planned Business Developments. The major objectives of this section are to: (a) facilitate development of a mix of uses that will increase the vitality in the Business 4 and Business 5 zoning districts; (b) create new jobs at a variety of income and skill levels; (c) replace vacant and blighted buildings with mixed-use development that will contribute to the fiscal health of the City; (d) encourage the development of affordable housing opportunities in accordance with the City's Inclusionary Housing Ordinance; (e) to the extent feasible, enhance the surrounding neighborhood, and (f) promote consistency with the City's comprehensive planning and Comprehensive Plan.

- (b) *Definitions.* As applied to a Planned Business Development, the following terms shall have the meanings set forth below when used in this Ordinance:

- (1) *Development Parcel* shall mean the real property on which a PBD is located, as shown on a PBD Plan approved by the Board of Aldermen in connection with a special permit under this section 30-15(s).
- (2) *PBD* shall mean any construction, alteration, enlargement, extension or reconstruction of buildings or structures, together with all facilities, parking, infrastructure and development related thereto, for which approval is sought pursuant to this Section 30-15(s).

(b) ~~(e)~~ *Minimum Criteria for PBDs.* In order to be eligible for any approval under Section (e) below, a PBD must meet the following threshold criteria:

- (1) The Development Parcel shall be located in the Business 4 or Business 5 zoning district;
- (2) The Development Parcel shall contain a minimum of ten (10) acres;
- (3) The total Floor Area Ratio of the PBD (excluding surface or structured parking and loading areas) shall not exceed 3.0;
- (4) The PBD shall include a mix of commercial and residential uses; and
- (5) The PBD shall provide onsite affordable housing opportunities in accordance with the City's Inclusionary Housing Ordinance (Section 30-24(f));
- (6) A Development Parcel in the Business 4 District shall contain at least 1,200 square feet of land area, whether improved or unimproved, for each dwelling unit located on the Development Parcel and a Development Parcel in the Business 5 District, shall contain at least 1,500 square feet of such land area for each dwelling unit located on the Development Parcel;
- (7) At least 20% percent of the Development Parcel on which a PBD with less than 250,000 square feet of gross floor area is located, and at least 30% percent of the Development Parcel on which a PBD with 250,000 or more square feet of gross floor area is located, shall consist of open space, e.g. areas uncovered by buildings or other structures, which shall specifically include: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational facilities;
- (8) Buildings in the PBD shall not exceed the heights permitted under Section 30-15(s)(d)(5) below; and
- (9) If the PBD includes a mix of uses and includes shared parking facilities, the following parking stall requirements shall apply to the PBD: (a) a minimum of 1.25 parking stalls for each dwelling unit, and (b) one parking stall for each 300 square feet of gross floor area of commercial use; otherwise a PBD shall be required to meet the parking stall requirements set forth in Section 30-19(d).

(c) ~~(d)~~ Prior to granting any approval under Section (ed) below, the Board of Aldermen shall first make the following findings, which findings shall be in addition to those required under Section 30-23(c)(2) and Section 30-24(d), with respect to the PBD:

- (1) As part of the construction and ultimate use of the PBD, conditions have been included to address any material adverse impacts on the immediate or nearby neighborhood resulting from construction itself, as well as traffic, parking and noise and other impacts associated with the as-built PBD;
- (2) The PBD provides for long term public benefits, such as affordable housing, substantial traffic and roadway enhancements, water and sewer infrastructure enhancements, to the immediate or nearby neighborhood;
- (3) The PBD provides public transit enhancements, including onsite public transportation facilities, transportation demand management initiatives, and



connectivity to offsite public transportation systems via shuttle service or other appropriate mechanisms;

- (4) The PBD has been designed with reference to the existing and currently proposed or planned land uses in the vicinity of the PBD;
- (5) The PBD includes uses compatible with abutting parcels and consistent with the City's Comprehensive Plan that are supportive of a well-planned region-serving corridor and which are integrated with and help produce transportation and other infrastructure enhancements that produce net positive impacts for the City;
- (6) The PBD creates relationships between the PBD, and abutting parcels and between the PBD and abutting streets, that are designed with appropriate consideration to streetscape continuity, where appropriate, and setbacks from abutting properties and ways;
- (7) The PBD includes access routes between the PBD and abutting parcels and ways that facilitate and enhance pedestrian and vehicular access within the neighborhood;
- (8) The PBD is in furtherance of the goals and policies of the City's comprehensive planning and Comprehensive Plan; and
- (9) The PBD is in harmony with the general purpose and intent of this Ordinance pursuant to Massachusetts General Laws Chapter 40A, Section 9.

(d) ~~(e)~~ *Density/Dimensional Bonus and Exceptions.* If a PBD is eligible for approval under Sections ~~(eh)~~ and ~~(dg)~~ above, the Board of Aldermen may grant site plan approval in accordance with the procedures provided in Section 30-23 and may grant a special permit in accordance with the procedures provided in Section 30-24 for the PBD granting exceptions to any applicable provisions of this Ordinance relating to density, bulk or dimensional controls, signage (whether onsite or offsite) and access, and/or permitting any use not expressly allowed in the Business 4 or Business 5 Districts; provided, however, that the following limitations shall apply: (1) Floor Area Ratio shall not exceed 3.0; (2) minimum off-street parking shall not be reduced by more than 1/3 of the parking otherwise required for the PBD under ~~this Ordinance~~ Section 30-19(d) or this Section 30-15(s), as applicable, if the criteria under Section 30-19(d)(18) are satisfied; (3) notwithstanding any applicable ordinance to the contrary, minimum lighting requirements may be reduced but not to less than an average of 0.75 footcandles; (4) uses not expressly allowed in the Business 4 or Business 5 Districts, but allowed by right or by special permit in other business or mixed-use districts in the City, shall be allowed only if the Board determines that they are compatible with the mix of uses within the PBD; (5) the height of any building in the PBD shall not exceed 96 feet; provided, however, that any building, or portion thereof, that is setback more than 1500 feet from the front and rear lot lines may include an additional one foot of height (excluding customary mechanical enclosures and rooftop elements) for every one and a half feet by which the applicable portion of the building is set back from the front or rear lot line, whichever is closer, up to a maximum of an additional 100 feet; and (6) all signage for a PBD shall be in accordance with the provisions of this Ordinance and a comprehensive signage program developed by the applicant and approved by the Board in accordance with the provisions of this Ordinance.

- (e) ~~(f)~~ *Lots*. In the application of the requirements of this Ordinance to a PBD, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot whether or not the Development Parcel is in single or multiple ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or demised premises within a PBD shall not be deemed to be a violation by any other owner or occupant within the PBD. Any PBD in multiple ownership shall be required to form a property owners association to coordinate the operation of the PBD among property owners and to facilitate communication with the City regarding the PBD.
- (f) ~~(g)~~ *Phasing*. Any PBD may be built in multiple phases over time. Notwithstanding the provisions of Section 30-24(c)(4) or other provisions of this Ordinance, provided that the development of a first phase of the PBD is commenced within two years of the issuance of such approval, exclusive of any period during which an appeal of the same is pending or any period during which events beyond the reasonable control, or otherwise for good cause, of the applicant or its successor delays the exercise of its rights, approvals under this Ordinance for a PBD shall not lapse; provided, however, that such phasing may be specified in the site plan approval.
- (g) ~~(h)~~ *Modifications*. Any material modification to a PBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23. The following provisions shall apply with respect to any proposed modification of a PBD: (A) a change of use or relocation of a use within the PBD shall not require additional approvals under this Ordinance if the total Gross Floor Area within the PBD devoted to such use does not increase by more than five percent (5%) in the aggregate, and (B) a change of use that results in a lower net parking requirement for the PBD (pursuant to Section 30-19) shall not require additional approvals under this Ordinance.
- (h) ~~(i)~~ *Applicability*. Buildings, structures, lots and uses within or associated with a PBD shall be governed by the applicable regulations for the Business 4 District or the Business 5 District, as applicable, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern.

**MEMORANDUM**

**TO:** Michael Kruse  
Director of Planning and Development

**FROM:** John E. Twohig, Esq.

**DATE:** April 18, 2007

**SUBJECT:** Draft of the Proposed Section 30-15(s) - Planned Business Development (PBD)

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Attached hereto is the revised draft of the proposed Section 30-15(s) (the “Proposed Zoning Amendment”). We have tried to address comments raised (i) at the public hearing of the Newton Zoning and Planning Committee held on March 26, 2007, including those comments made by members of the Newton Board of Aldermen, members of the Newton Planning Department and others; and (ii) by the Newton Planning Department on April 12, 2007. Specifically, I would like to highlight the following revisions to the Proposed Zoning Amendment, which were made in response to such comments:

<b>Comment</b>	<b>Corresponding revision to the Proposed Zoning Amendment</b>
Are PBD uses required to comply with neighboring land uses or other uses in the PBD?	Additional mandatory findings have been added to Section 30-15(s)(c)(5) to address this question.
When may the Aldermen grant a 1/3 reduction in the parking quantity requirement?	It has been clarified in Section 30-15(s)(d) that the existing criteria for parking reductions under Section 30-19(d)(18) must be met.
How do the Aldermen determine what land is under-utilized in the City?	All references to “underutilized land” have been removed from the Proposed Zoning Amendment.
The PBD should encourage affordable housing on-site.	On-site affordable housing is now required for a PBD.

Comment	Corresponding revision to the Proposed Zoning Amendment
How does the Board of Aldermen determine whether the proposed use in the PBD is in harmony with the Newton Zoning Ordinance?	It has been clarified in Section 30-15(s)(c)(9) that the standard is the same as required under MGL Ch 40A, Section 9.
Include a height limitation.	A height limitation has been added to Section 30-15(s)(d).
Include provisions regarding how the buildings will relate to the street (setbacks, etc.).	Additional mandatory findings have been added to Section 30-15(s)(c)(6) and (7) to address this comment.
Explain how the PBD furthers the Draft Comprehensive Plan.	Mandatory findings have been added to Section 30-15(s)(c)(5) and (8) to require that the PBD advance the City's Draft Comprehensive Plan.
The PBD does not address transit utilization and infrastructure.	Mandatory findings have been added to Section 30-15(s)(c)(3) to require public transit enhancements in connection with a PBD.
The proposed lighting standard must also address the City's Light Ordinance.	Section 30-15(s)(d)(3) now provides that "notwithstanding any applicable ordinance to the contrary, minimum lighting requirements may be reduced but not to less than an average of 0.75 footcandles."
There is no statement within section 30-15(a) or the overall amendment, which establishes a requirement for necessary underlying zones.	Section 30-15(s)(b) provides that a Development Parcel must be located in the Business 4 or Business 5 zoning district.
Appropriate linkage should be provided indicating how these findings relate to the criteria already established in Section 30-23(c)(2) and 30-24(d).	It has been clarified in Section 30-15(s)(c) that all findings under Section 30-23(c)(2) and Section 30-24(d) are required in addition to PBD-specific findings.

Comment	Corresponding revision to the Proposed Zoning Amendment
The Inspectional Services Commissioner has broad authority to review proposed modifications	The provision authorizing the Commission of Inspectional Services to approve certain material modifications has been deleted.
The GFA exception should be further clarified as to whether this applies to successive incremental alterations or caps aggregate alterations over time.	Section 30-15(s)(g) now provides that a change of use or relocation of a use within the PBD of more than five percent (5%) <u>in the aggregate</u> shall require approval by the Board of Aldermen.
In Section 30-11, add "Planned Business Development" as a use category for which a special permit may be granted in Business 4 and 5 Districts.	"Planned Business Development" has been added as a special permit use category to Sections 30-11 (d) and (i).
In Section 30-1, add definitions for "Development Parcel" and "Planned Business Development."	Section 30-1 has been revised to include definitions for "Development Parcel" and "Planned Business Development" to address this comment.
Section 30-15(s)(b) should contain a minimum lot area per unit requirement.	A minimum lot area per unit requirement has been added to Section 30-15(s)(b) for Development Parcels located in the Business 4 and Business 5.
Section 30-15(s)(b) should contain a minimum open space requirement.	A minimum open space requirement has been added to Section 30-15(s)(b) to address this comment.
Section 30-15(s)(b) should contain a height limitation.	Section 30-15(s)(b) now provides that a PBD must not exceed the new height limitation included in Section 30-15(s)(d).

Comment	Corresponding revision to the Proposed Zoning Amendment
Section 30-15(s)(b) should include minimum off-street parking requirements.	Section 30-15(s)(b) now provides minimum off-street parking requirements specifically applicable to a PBD to address this comment.

We hope that the above summary is useful in your review of the revised zoning amendment. If you have any questions or would like any further information please do not hesitate to contact me. Otherwise, I would ask that you forward this summary, together with the revised zoning text, to the appropriate members of the Board of Aldermen and Planning Department. Thank you.